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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

LOU FINH SAEPHAHN et al.,

Defendants and Appellants.

C068827

(Super. Ct. No. 10F01439)

Following the denial of their suppression motion, codefendants Lou Finh Saepanh (Lou) and Sou Finh Saepanh (Sou)¹ pleaded no contest to possession of methamphetamine for sale. (Health & Saf. Code, § 11378.) The trial court placed Lou on five years of formal probation subject to 180 days in county jail, and sentenced Sou to 16 months in state prison.

¹ As codefendants have the same middle and last names, we refer to the brothers by their first names. No disrespect is intended.

On appeal, codefendants contend the trial court erred in denying their suppression motion. We shall affirm.

FACTUAL BACKGROUND

We take the facts from the hearing on codefendants' suppression motion.²

On February 11, 2010, Sacramento Police Detective Chris Starr received information from a confidential informant that a person with the street name "Shadow" was on parole and selling methamphetamine in an area within Sacramento County. Starr investigated the information and determined that Shadow was Chia or Liam Saechao, who was associated with a house on Eagle Park Drive in Sacramento County. He found the house through a nearby parked car associated with the suspect.

Detective Starr and other officers conducted surveillance of a house at 7607 Eagle Park Drive on February 24, 2010. He saw multiple subjects approaching the house by foot or vehicle. They would go inside and then exit the house within several minutes. Based on the information from the confidential informant, Starr's observations of the home, and other information, Starr obtained a warrant to search the Eagle Park Drive house.

² Codefendants waived conflict of interest and were represented by the same counsel, who filed a single suppression motion on their behalf.

On March 3, 2010, Detective Starr and other officers conducted surveillance of the residence in preparation of serving the search warrant. The surveillance began at 7:00 a.m. and lasted for four to five hours. Starr noticed about 10 to 12 short visits by people who would knock on the door, enter, and leave a few minutes later.

At 7:45 a.m., Detective Starr saw a black Nissan Sentra driven by Lou arrive at the residence. Lou exited the car and entered the house without knocking on the door. He left about six minutes later with an Asian male with whom he drove off in the Sentra. Lou was also seen leaving the house again at 12:11 p.m., but the surveillance team did not see him enter the house a second time. Lou was alone the second time he left, and drove off in the Sentra.

Detective Starr reported Lou's second departure over the radio, and another detective told officers to conduct a traffic stop on Lou's car. Sacramento Police Detective Jonathan Houston heard the radio dispatch regarding the Sentra. He had also attended the earlier briefing concerning the search warrant on the Eagle Park Drive residence, where he was advised of the criminal history and the nature of the individuals suspected of selling drugs from that house.

Detective Houston started to follow the Sentra shortly after it left the Eagle Park Drive residence. An armed probation officer was in the car with him. Houston saw the driver of the Sentra was alone and decided to follow the car

until backup arrived to assist in the traffic stop. Although the Sentra was speeding and its brake lights were not functioning properly, Houston did not conduct a vehicle stop as the Sentra stopped at a house before the anticipated backup had arrived.

Lou's car stopped in the driveway of a house at 6140 Logan Drive, about three miles from the Eagle Park Drive house. Lou got out of the car and walked up the driveway. Detective Houston parked his car on the sidewalk, with the front end at a 45 degree angle to the driveway, partially blocking the Sentra. He left his car, approached Lou, and asked whether he was on probation or parole. Lou said he was not, and Houston patted him down. Houston asked if he had anything illegal, and Lou gestured towards his front pants pocket.

Detective Houston conducted the patdown due to concerns for his safety based on the nature of the search warrant, what he had learned during the briefing, the investigation, and the surveillance, and on his own personal experience that people associated with drug houses commonly possess weapons. Houston believed that "[n]arcotics and being armed . . . go hand in hand."

Sacramento Police Detective Donald Schumacher arrived at the Logan Drive residence shortly after Detective Houston. He was wearing a police raid vest. He pulled his car behind Houston's and exited. As Houston was conducting the patdown of Lou, Schumacher noticed Lou standing on the walkway about 10 to

15 feet from the front door of the Logan Drive residence. Sou was carrying a mop and bucket, and the front door was wide open. According to Schumacher, Sou was walking towards the driveway and they met "kind of in between."

Detective Schumacher approached Sou and asked whether he was on parole or probation; Sou replied that he was on parole. Schumacher then handcuffed Sou to insure a safe parole search. He asked Sou whether anyone else was in the house, and Sou said that his nine-year-old daughter was inside. Believing Sou exercised dominion and control of the residence, Schumacher conducted a parole search of the house. He later confirmed that Sou was on parole.

Sou testified that Detective Schumacher "ordered me to come over" by using his right index finger and saying, "'You come over here.'" According to Sou, he told Detective Schumacher that his girlfriend's daughter was sleeping in the house. Sou testified that he was not asked any other questions about the house until after being handcuffed.

After argument, the trial court summarily denied codefendants' suppression motion.

DISCUSSION

I. Lou—The Patdown

Lou contends the trial court erred in denying his suppression motion because he was subjected to a patdown without

reasonable suspicion, a violation of his Fourth Amendment rights.³ We disagree.

The Fourth Amendment protects against unreasonable searches and seizures. (U.S. Const., 4th Amend.; *Terry v. Ohio* (1968) 392 U.S. 1, 20 [20 L.Ed.2d 889, 905].) After a stop, police officers may conduct a limited search of a suspect if they have reason to believe the suspect is armed and dangerous. (*Terry*, at p. 27 [20 L.Ed.2d at p. 909].) This exception to the warrant requirement is limited, confined in scope to intrusions reasonably designed to discover weapons. (*Id.* at p. 29 [20 L.Ed.2d at p. 911].) “[T]he issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” (*Id.* at p. 27 [20 L.Ed.2d at p. 909].)

Although a *Terry* patdown does not require probable cause, it is justified only when “specific and articulable facts which, taken together with rational inferences from those facts,” warrant a suspicion that a suspect is armed and dangerous. (*Terry*, *supra*, 392 U.S. at p. 21 [20 L.Ed.2d at p. 906].) “[T]he facts available to the officer at the moment of the seizure or the search [must] ‘warrant a man of reasonable

³ Sou also argues that the patdown of Lou violated the Fourth Amendment. We disregard his arguments regarding the alleged infringement of Lou’s Fourth Amendment rights, as “‘Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted.’” (*Rakas v. Illinois* (1978) 439 U.S. 128, 133-134 [58 L.Ed.2d 387, 394-395].)

caution in the belief' that the action taken was appropriate." (*Id.* at pp. 21-22 [20 L.Ed.2d at p. 906].) In determining the reasonableness of a challenged search, the court looks to the totality of the circumstances. (*People v. Miles* (1987) 196 Cal.App.3d 612, 617-618.)

Defendant Lou contends his patdown was not supported by "specific, articulable facts that would have led a reasonable officer to believe that" he was "armed and dangerous at the time of the search." He notes that a probation officer was in Detective Houston's car when he encountered Lou, and Detective Schumacher arrived as Houston was conducting the patdown. According to Lou, Houston saw him commit no offense other than traffic violations [faulty brake lights], and "[h]e did not identify any suspicious, aggressive, or evasive behavior on Lou's part prior to the pat search." Lou discounts his association with the suspected drug house by noting that the search warrant and supporting affidavit were not introduced at the suppression hearing.

"When we review the denial of a motion to suppress, we view the record in the light most favorable to the trial court's ruling. We defer to the trial court's findings of fact, whether express or implied, if those findings are supported by substantial evidence. We independently determine what legal principles are relevant, and apply those principles to the facts. We determine as a matter of law whether the search or seizure was unreasonable." (*People v. Aguilar* (1996)

48 Cal.App.4th 632, 637.) ""Where there are no express findings of fact, it is implied that the trial court . . . made whatever findings were necessary to support the judgment or order."" (People v. Molina (1994) 25 Cal.App.4th 1038, 1041.)

Detective Houston had reasonable suspicion to believe that defendant Lou was involved in the sale of illegal drugs. There was evidence that Lou was closely associated with the house on Eagle Park Drive—he entered the home twice within the span of five hours and was able to enter it without knocking on the door. (See People v. Huerta (1990) 218 Cal.App.3d 744, 749 [“When [the] defendant entered the residence without knocking or announcing his presence the officers executing the warrant had reason to believe [the] defendant was directly connected to the premises in some way.”].) There was also substantial evidence for the trial court’s implied finding that drugs were being sold at this house—the large number of short-term visitors to the house, and, most importantly, police were able to obtain a search warrant on the home based on an investigation of drug sales in the area.⁴

Lou was stopped almost immediately after his brief drive from the Eagle Park Drive residence. He was closely associated with the suspected drug house, and engaged in activity

⁴ The warrant or supporting affidavit were not introduced at the suppression motion, but the existence or validity of the warrant was not contested at the suppression hearing. Accordingly, the court could rely on the warrant’s existence as evidence that drugs were being sold in the residence.

consistent with the sale of drugs at that house—making more than one brief visit to the home. Detective Houston therefore had reasonable suspicion that Lou was involved in the sale of drugs. This in turn gave the detective reasonable suspicion to believe that Lou was armed. (See, e.g., *People v. Bland* (1995) 10 Cal.4th 991, 1005 [“Drug dealers are known to keep guns to protect not only themselves, but also their drugs and drug proceeds; ready access to a gun is often crucial to a drug dealer’s commercial success.”]; *People v. Gallegos* (2002) 96 Cal.App.4th 612, 629 [same]; see also *People v. Glaser* (1995) 11 Cal.4th 354, 367 [firearms are ““tools of the trade”” in narcotics business]; *People v. Bradford* (1995) 38 Cal.App.4th 1733, 1739 [“it is common knowledge that perpetrators of narcotics offenses keep weapons available to guard their contraband”]; *People v. Limon* (1993) 17 Cal.App.4th 524, 535 [it is not unreasonable for an officer to assume that a suspected drug dealer might be armed].)

Since Detective Houston had reasonable suspicion to believe that Lou was armed, the patdown was lawful.

II. Sou—The Parole Search

Sou contends that the search of the Logan Drive home was unlawful, as it was the product of his unlawful detention and Detective Schumacher had insufficient information to associate him with the home.

A. Detention

Sou claims that he was detained when Detective Schumacher asked him about his parole status. In support of his contention, Sou notes that Lou's car was blocked in the driveway, Lou was being frisked by Detective Houston, and Schumacher, wearing a police raid vest, "ordered him to approach, and motioned for him to do so with his finger."

"[W]henver a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person." (*Terry, supra*, 392 U.S. at p. 16 [20 L.Ed.2d at p. 903].) "[A] seizure does not occur simply because a police officer approaches an individual and asks a few questions. So long as a reasonable person would feel free 'to disregard the police and go about his business,' [citation], the encounter is consensual and no reasonable suspicion is required. The encounter will not trigger Fourth Amendment scrutiny unless it loses its consensual nature." (*Florida v. Bostick* (1991) 501 U.S. 429, 434 [115 L.Ed.2d 389, 398].) "[M]ere police questioning does not constitute a seizure." (*Ibid.*)

Sou's argument relies in part on disputed facts. His assertion that Detective Schumacher ordered him to approach while motioning with his finger is taken from his own testimony. This contradicts Detective Schumacher's testimony that he walked towards Sou, met him between the house and the driveway, and then asked about his parole status. Although the trial court did not explicitly rule that Sou's testimony was not credible on this point, that finding is implied from the court's ruling.

It is not clear whether Sou saw Lou being frisked before his encounter with Detective Schumacher. Sou testified that he "happened to see a car, SUV car blocking the driveway. I thought that was kind of weird so that's when I looked up. That's when I seen Mr. Schumacher and the other officers[,] that's when they ordered me over." According to Sou, he was about 15 feet from what was going on in the driveway when Detective Schumacher handcuffed him. Schumacher testified that he saw Detective Houston frisking Lou when he got out of his patrol vehicle.

Even if we assume Sou saw the frisk, he was not detained when Detective Schumacher asked him about his parole status. The fact that another person is being detained by another officer does not transform a person's encounter with an officer into a detention. Likewise, wearing a police raid vest is not a show of force supporting a detention. Schumacher walked up to Sou and asked him a question. That is not a detention and therefore Schumacher could rely on the fruits of his encounter with Sou.

B. Search

As with other warrantless searches, a warrantless entry of a residence is presumptively unreasonable absent exigent circumstances. (*Mincey v. Arizona* (1978) 437 U.S. 385, 393-394 [57 L.Ed.2d 290, 301].) A probation or parole search is a recognized exception to the warrant requirement so long as the search is not arbitrary, capricious, or harassing. (*People v.*

Reyes (1998) 19 Cal.4th 743, 751.) An officer conducting a parole search must have a reasonable belief that the suspect lives in the home and is present there at the time.⁵ (*People v. Downey* (2011) 198 Cal.App.4th 652, 662 (*Downey*).)

Sou argues that Detective Schumacher could not rely on Sou's admission that he was on parole, and should have independently confirmed the admission before conducting a parole search. He does not, and cannot, cite authority for his novel proposition that a detective cannot rely on a person's statement that he is on parole. A person has no motive to falsely claim that he is on parole. Requiring independent verification of the admission creates unnecessary investigation and would prolong encounters to verify parole status.

Detective Schumacher testified that he saw the door to the Logan Drive home was open, Sou was walking up to see what was going on in front, carrying a mop and bucket, and Sou admitted that his daughter was in the home. This is more than enough to support a reasonable belief that Sou was cleaning a home that he

⁵ We reject Sou's contention, based on Ninth Circuit precedent, that an officer needs probable cause to believe the parolee lives in the residence in order to conduct a parole search. (See *Motley v. Parks* (9th Cir. 2005) 432 F.3d 1072, 1075 (en banc), disapproved on other grounds in *United States v. King* (9th Cir. 2012) 687 F.3d 1189 (*per curiam*); *United States v. Howard* (9th Cir. 2006) 447 F.3d 1257, 1262.) Ninth Circuit decisions are not binding on us. (*People v. Bradley* (1969) 1 Cal.3d 80, 86.) We decline to follow the Ninth Circuit rule, which is contrary to California law and the majority of the federal circuit courts that have addressed the issue. (See *Downey, supra*, 198 Cal.App.4th at pp. 661-662.)

lived in with his daughter. Since Schumacher knew Sou was on parole, he could conduct a parole search of the home.

DISPOSITION

The judgments are affirmed.

_____, BUTZ, J.

We concur:

_____, NICHOLSON, Acting P. J.

_____, MAURO, J.